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Proposed Attorneys for Debtor-in-Possession DGS Store Fixtures, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

In re

DGS STORE FIXTURES, INC.,

Debtor.

Bankruptcy Case No. 14-31080

Chapter 11

Honorable Joel T. Marker

**MOTION FOR ORDER APPROVING SALE OF SURPLUS EQUIPMENT
OR ALTERNATIVELY, MOTION TO AUTHORIZE THE ASSUMPTION
OF EQUIPMENT PURCHASE AGREEMENT**

Pursuant to Bankruptcy Code §§ 363 and 365, and Bankruptcy Rules 2002, 6004 and 6006, DGS Store Fixtures, Inc. (the “Debtor”) through its undersigned counsel, hereby files its *Motion for Order Approving Sale of Surplus Equipment or Alternatively, Motion to Authorize the Assumption of Equipment Purchase Agreement* (the “Motion”). In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The Debtor filed a voluntary chapter 11 petition on October 20, 2014. The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Bankruptcy Code §§ 1107 and 1108.
5. No examiner or trustee has been appointed in this case.

GENERAL BACKGROUND

6. The Debtor is a manufacturer of custom retail store fixtures which it sells to large national retail chains including supermarkets, drug stores, department stores and various specialty retailers. Customers retain the Debtor to manufacture custom fixtures specific to their individual needs and designs. The fixtures are primarily made of wood, but also include metal, acrylic, lighting and graphics.
7. The Debtor currently operates out of a 102,000 square foot plant in Payson, Utah (the "Payson Facility"). However, the Debtor anticipates ceasing all in-house production in its Payson Facility on October 31, 2014 and will service its remaining customers through a network of local vendors.
8. Because the Debtor's ongoing business model does not contemplate continued manufacturing after October 31, 2014, on October 10, 2014, ten days prior to its unanticipated bankruptcy filing, the Debtor entered into an Equipment Purchase

Agreement (the “Agreement”) with JSI Store Fixtures, Inc. (“JSI”) whereby JSI agreed to purchase from the Debtor certain “Equipment” as defined in the Agreement attached hereto as Exhibit A and incorporated herein by reference.

9. Pursuant to the terms of the Agreement, JSI will purchase much of the Debtor’s equipment located in the Payson Facility. Furthermore, the Debtor is informed that JSI and the landlord for the Payson Facility are negotiating lease terms whereby JSI will operate out of a portion of the Payson Facility with the Equipment and anticipates hiring some of the Debtor’s former employees.

10. As far as the Debtor is aware, JSI and its principals have no connection – other than pursuant to the Agreement – with the Debtor or the Debtor’s principals. The Agreement was entered into between the Debtor and JSI as an arms’ length business transaction upon commercially reasonable business terms.

11. Prior to entering into the Agreement, the Debtor received two other offers to purchase the Equipment but selected JSI in its business judgment as the highest and best offer for the Equipment.

12. At the time the Agreement was negotiated and executed, the Debtor was attempting an orderly wind down of its operations and transition to its new business model and it was neither contemplated nor anticipated that the Debtor would be required to file bankruptcy prior to closing the Equipment sale pursuant to the Agreement.

13. Pursuant to the terms of the Agreement, JSI agreed to purchase the Equipment for \$500,000. JSI made an initial deposit of \$50,000 in connection with the execution of the Agreement on October 10, 2014, which the Debtor is holding. The

remaining \$450,000 balance of the purchase price will be paid at closing. See Agreement, ¶3.

14. The Agreement calls for the closing to “take place on October 31, 2014 or on a date mutually agreed to by the [JSI] and [Debtor] (the “Closing Date”).” See Agreement ¶2(c). Because of the Debtor’s unanticipated bankruptcy filing, although JSI has not waived the Closing Date deadline, it has nonetheless expressed its willingness to honor the terms of the Agreement if closing occurs before November 27, 2014.

15. All of the Equipment to be sold pursuant to the Agreement is encumbered by a properly perfected lien of Santander Bank, N.A. (“Santander Bank”) and all proceeds from the sale of the Equipment shall be the Cash Collateral (as defined in 11 U.S.C. §363(a)) of Santander Bank.

RELIEF REQUESTED

I. Sale of Equipment Pursuant to §363

16. Bankruptcy Code § 363 provides that the Debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Bankruptcy Code § 363(b). To approve the use, sale or lease of property outside of the ordinary course of business, the Debtor must show four requirements: “(1) that a sound business reason exists for the sale; (2) there has been adequate and reasonable notice to interested parties, including full disclosure of the sale terms and the Debtor’s relationship with the buyer; (3) that the sale price is fair and reasonable; and (4) that the proposed buyer is proceeding in good faith.” In re Medical Software Solutions, 286 B.R. 431 (Bankr. D. Utah 2002); accord Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)

(identifying the “sound business purpose” test); In re Abbotts Dairies of Penn., Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the articulated business justification test of Lionel, and adding the “good faith” requirement).

17. In general, bankruptcy courts often defer to a debtor’s business judgment regarding the sale of estate assets, unless such decision is arbitrary and capricious. See In re Curlew Valley Assocs., 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor’s business decisions when those decisions involve “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code.” Curlew Valley, 14 B.R., at 513-14 (footnotes omitted).

18. The Debtor has sound business reasons for the proposed sale. After October 31, 2014, the Debtor will cease operating out of the Payson Facility and the Debtor’s ongoing business model – to service its remaining customers through a network of local vendors – means that the Debtor will have no further use for the Equipment.

19. As to the second factor, the Debtor submits that this Motion provides ample notice to parties in interest of the proposed sale. Among other things, the Debtor proposes to provide notice and sufficient time for parties in interest to submit objections. Furthermore, the Debtor has been looking to sell its Equipment for several months and has been actively searching for the most beneficial sale of the Equipment.

20. Based on an competing offers for the Equipment received by the Debtor prior to its bankruptcy filing, and its own significant knowledge and experience with the Equipment, the Debtor believes the proposed sale price represents fair value for the

Equipment. In addition, the sale of the Equipment will conserve the estate's resources because the estate will not be required to pay for the storage or maintenance of the Equipment.

21. Finally, the Debtor believes and submits that JSI has proceeded in good faith with respect to sale of the Equipment. In the context of 11 U.S.C. §363(m) a "good faith" purchaser is "one that buys in good faith, and for value." Tompkins v. Frey (In re Bel Air Assocs., Ltd.), 706 F.2d 301, 304 (10th Cir. 1983). Actions that destroy a purchaser's good faith include "fraud, collusion between purchaser and other bidders or trustee, or an attempt to take grossly unfair advantage of other bidders." Id. At 305 n. 11; see also, In re Lotspeich, 328 B.R. 209 (10th Cir. BAP 2005).

22. Here, the Debtor has solicited independent bids for the Equipment. Additionally, the terms of the Agreement were independently negotiated by the Debtor and JSI, and in the Debtor's business judgment, the purchase price for the Equipment set forth in the Agreement represents a fair and reasonable value for the Equipment. Finally, the material terms of the Equipment's sale are being fully disclosed to the Court and parties in interest. Accordingly, the Debtor submits that the proposed sale of the Equipment to JSI is an arms-length transaction made to a good faith buyer.

23. Because the proceeds from the sale of the Equipment constitute Santander Bank's Cash Collateral, the Debtor is also requesting authority to pay all the sale proceeds directly to Santander Bank.

II. Assumption of the Equipment Purchase Agreement Pursuant to §365

24. In the alternative, the Debtor proposes to assume the Agreement pursuant to 11 U.S.C. §365(a) of the Bankruptcy Code which provides that a debtor, "subject to

the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. It provides:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
- (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

25. The decision to assume or reject an executory contract or unexpired lease is a matter within the "business judgment" of the debtor. Group of Institutional Investors v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 318 U.S. 523, 549-550 (1943). The business judgment standard mandates that a court approve a debtor's business decision unless the decision is the product of bad faith, whim or caprice. Lubrizol Enters. v. Richmond Metal Finishes, 756 F.2d 1043, 1047 (4th Cir. 1985). Once a debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" Official Comm. of Subordinated Bondholders v.

Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992). Therefore, the business judgment standard is satisfied when the debtor determines that acceptance or rejection will benefit the estate. In re TS Indus., Inc., 117 B.R. 682, 685 (Bankr. D. Utah 1990).

26. It is the Debtor's business judgment that the assumption of the Agreement is in the best interests of the estate and its creditors. Significantly, the Debtor is not continuing its manufacturing operation beyond October 31, 2014 and has no further use of the Equipment.

27. The Debtor believes that its reorganization around a more nimble business model that will service its remaining customers through outsourcing to local vendors is in the best interests of creditors and will maximize returns to all creditors.

28. Courts give the phrase "adequate assurance of future performance" a "practical, pragmatic construction." EBG Midtown S. Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992), aff'd, 993 F.2d 300 (2d Cir. 1993) (presence of adequate assurance should be "determined under the facts of each particular case"). Adequate assurance does not require a debtor to provide a guarantee of future performance; assurance is deemed adequate as long as performance is more probable than not. See Cinicola v. Scharffenberger, 248 F.3d 110, 120 n. 10 (3d Cir. 2001) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance." (quotations and citations omitted)).

29. Here, the Debtor's has not defaulted on its obligations owing under the Agreement and its remaining obligations only require it to effectuate the transfer of the Equipment pursuant to the Agreement for which the Debtor will receive an additional

\$450,000 payment. This coupled with the Debtor's change in its business practice offers adequate assurance to JSI that the Debtor will perform as required under the Agreement.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of an order:

- A. Granting this Motion;
- B. Authorizing the sale of the Equipment on the terms and conditions of the Agreement pursuant to 11 U.S.C. §§ 105 and 365;
- C. Finding he JSI is a "good faith purchaser" including for purposes of 11 U.S.C. § 363(m);
- D. Authorizing the Debtor to pay to Santander Bank the Equipment sale proceeds;
- E. In the alternative, approving the Debtor's assumption of the Agreement pursuant to 11 U.S.C. §365; and
- F. For such other and further relief as is just and proper under these circumstances.

DATED this 31st day of October, 2014.

PARSONS KINGHORN HARRIS
A Professional Corporation

/s/ Benjamin J. Kotter
George Hofmann
Benjamin J. Kotter
Proposed Attorneys for the Debtor DGS Store Fixtures, Inc.

Exhibit A

EXECUTION COPY

EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement (the "*Agreement*") entered into as of October 10, 2014, by and among (i) **JSI STORE FIXTURES INCORPORATED**, a Delaware corporation (the "*Buyer*"), (ii) **DGS STORE FIXTURES, INC.**, a Delaware corporation (the "*Seller*"), and (iii) **DGS RETAIL HOLDINGS, INC.**, a Delaware corporation, which owns all of the issued and outstanding stock of the Seller (the "*Sole Owner*"). The Buyer, the Seller and the Sole Owner are referred to collectively herein as the "*Parties*" and singularly as a "*Party*".

WITNESSETH:

WHEREAS, the Seller owns the equipment set forth on Schedule A (collectively, the "*Equipment*"); and

WHEREAS, the Buyer desires to purchase from Seller the Equipment excluding the assets listed on Schedule B (the "*Excluded Assets*") (and assume none of the liabilities) of the Seller, and the Seller desires to sell the Equipment to the Buyer, in each case on the terms, and subject to the conditions, set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the agreements and mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties hereby agree as follows.

1. *Definitions.* In addition to the terms given definition elsewhere herein, certain terms shall have meanings set forth on Annex I.

2. *Basic Transaction.*

(a) *Purchase and Sale of Equipment.* On and subject to the terms and conditions of this Agreement, the Buyer hereby purchases from the Seller, and the Seller hereby sells, transfers, assigns, conveys, and delivers to the Buyer, all of the Seller's right, title and interest in and to the Equipment, free and clear of any and all Security Interests or lease obligations, in consideration of the Purchase Price. The Parties specifically acknowledge and agree that the Seller shall retain the Excluded Assets subsequent to the Closing and that no liabilities will be assumed by the Buyer.

(b) *No Assumption of Liabilities.* The Buyer will not assume any liabilities of the Seller whatsoever, whether relating to the Equipment or the Excluded Assets.

(c) *The Closing.* If the conditions set forth in Section 2(d) have been satisfied, then the closing of the transactions contemplated hereby (the "*Closing*") shall take place on October 31, 2014 or on a date mutually agreed to by the Buyer and Seller (the "*Closing Date*").

(d) *Conditions to Closing:* The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions as of the Closing: (i) Seller has delivered a letter or letters executed by any and all banks and/or other secured parties with a Security Interest in the Equipment which authorizes (A) the release of all Security Interests in the Equipment on the Closing Date, and (B) the filing of an amendment or termination statement to any applicable financing statement by the Buyer's authorized representatives, and (ii) Seller has delivered substantially the same Equipment as described on Schedule A.

(e) *Payments in Cash.* All cash payments made pursuant to this Agreement shall be made in United States dollars, by wire transfer to such accounts as the Buyer or the Seller, as the case may be, shall designate in writing, or by certified or cashier's check.

(f) *Transfer Taxes.* The Buyer shall pay any applicable sales, transfer, use, purchase or similar Taxes ("*Transfer Taxes*") resulting from the transactions contemplated hereby. The Parties hereto shall also cooperate in providing the information required by any returns or other documentation relating to Transfer Taxes.

(g) *Other Deliveries.* At the Closing, the Seller and Buyer will execute and deliver to the other is a bill of sale, in a form to be mutually agreed by Buyer and Seller.

3. *Purchase Price and Closing Payment.* The aggregate purchase price for the Equipment shall be equal to:

(a) a \$50,000 deposit (the "*Deposit*"), payable by the Buyer to the Seller on the date hereof; provided, that, if (i) the Seller for any reason cannot transfer the Equipment free and clear of any Security Interests or (ii) the Equipment is materially different

from the Equipment described on Schedule A, then the Seller shall promptly return the Deposit to the Buyer in full in the time and manner identified by the Buyer at such time; plus

(b) the sum of \$450,000 (the "Cash Closing Payment", collectively, the "Purchase Price").

(c) The Purchase Price shall be paid as follows: (i) as of the date hereof, the Buyer shall pay to the Seller the Deposit, and (ii) at the Closing, Buyer shall pay to the Seller the Cash Closing Payment. **For the avoidance of doubt, the Deposit is only refundable to Buyer in the case of the circumstances described in clauses (i) and (ii) of Section 3(a) hereof.**

4. *Representations and Warranties of the Seller and the Sole Owner.* The Seller and the Sole Owner jointly and severally represent and warrant to the Buyer that the statements contained in this §4 are correct and complete as of the date of this Agreement.

(a) *Organization of the Seller.* Each of the Seller and the Sole Owner is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation. Each of the Seller and the Sole Owner has all requisite power and authority, and all licenses, Permits, and authorizations necessary, to own, operate and lease the Equipment.

(b) *Authorization of Transactions.* Each of the Seller and the Sole Owner has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Seller and the Sole Owner, enforceable against the Seller and the Sole Owner in accordance with its terms and conditions.

(c) *Title to Assets.* The Seller has good and marketable title to the Equipment, free and clear of all Security Interests or restriction on transfer.

5. *Representations and Warranties of the Buyer.* The Buyer represents and warrants to the Seller that the statements contained in this §5 are correct and complete as of the date of this Agreement.

(a) *Organization of the Buyer.* The Buyer is a limited liability company validly existing under the laws of the State of Delaware.

(b) *Authorization of Transactions.* The Buyer has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable in accordance with its terms and conditions.

6. *Post-Closing Covenants.* The Parties agree as follows with respect to the period following the Closing.

(a) *General.* If at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under §7 below).

7. *Remedies for Breaches of this Agreement; Indemnification.*

(a) *Obligations of the Seller and the Sole Owner to Indemnify.* The Seller and the Sole Owner shall, jointly and severally, indemnify, defend and hold harmless the Buyer and its assigns from and against any Adverse Consequences suffered, sustained, incurred or required to be paid by the Buyer or its assigns, as the case may be, based upon, arising out of or otherwise with respect to (i) any failure to perform or comply with any covenant or agreement of the Seller and/or the Sole Owner contained herein or in any document or other paper delivered pursuant hereto, (ii) any Excluded Liability, (iii) a breach or inaccuracy of any representation or warranty of the Seller and the Sole Owner contained in §4 for which a claim was asserted prior to the expiration of the applicable survival period, and/or (iv) any facts alleged by any third party that, if true, would constitute a breach, event or occurrence of the type described in clause (iii).

The foregoing indemnities shall not be exclusive, but shall be in addition to any other rights or remedies to which the Buyer and its assigns, as the case may be, may be entitled at law or in equity.

(b) *Obligation of the Buyer to Indemnify.* The Buyer shall indemnify, defend and hold harmless the Seller, the Sole Owner and their respective assigns from and against any Adverse Consequences suffered, sustained, incurred or required to be paid by the Seller or the Sole Owner based upon, arising out of or otherwise with respect to, (x) a breach or

inaccuracy of any representation or warranty of the Buyer for which a claim was asserted prior to the expiration of the applicable survival period, or (y) any facts alleged by any third party prior to the expiration of the applicable survival period that, if true, would constitute a breach of the type described in clause (x), or (z) any failure to perform or comply with any covenant or agreement of the Buyer contained herein or in any document or other paper delivered pursuant hereto. The foregoing indemnity shall not be exclusive, but shall be in addition to any other rights or remedies to which the Seller, the Sole Owner and their respective assigns may be entitled at law or in equity.

(c) *Covered Persons.* The obligations of the Seller under §7 shall extend, upon the same terms and conditions, to each person, if any, who controls the Buyer, and each of their respective successors and assigns, and to directors, officers, managers, employees, consultants and agents of the Buyer and each of their respective assigns, and their controlling persons.

8. *Termination:* This Agreement may be terminated as follows:

(a) by mutual written consent of the Buyer and Seller;

(b) by Buyer, unilaterally, if any condition to Closing set forth in Section 2(d) is not satisfied by Seller by October 31, 2014, (or such other date as the parties may agree upon); or

(c) by the Seller, unilaterally, if any condition to Closing set forth in §2(d) is not satisfied on or before October 31, 2014, (or such other date as the Parties may agree upon), unless such failure to satisfy the Section 2(d) condition is due to the failure of Seller to perform or comply with any of the covenants or agreements to be performed or complied with by them prior to Closing or due to a breach of Seller's representation herein.

(d) For the avoidance of doubt, if the Seller has satisfied the conditions in §2(d) by October 31, 2014 (or such other date agreed by Buyer and Seller), then Seller is entitled to the Deposit in full and the Buyer will be obligated to close on October 31, 2014 (or such other date agreed by Buyer and Seller). The Buyer may only terminate this Agreement unilaterally if the Seller has failed to satisfy the conditions in §2(d) by October 31, 2014 (or such other date agreed by Buyer and Seller). If any Party terminates this Agreement pursuant to Section 8

above, all rights and obligations of the Parties hereunder shall terminate, provided that each Party shall remain liable for any willful breach of any covenant contained in this Agreement prior to such termination.

9. *Miscellaneous.*

(a) *No Third-Party Beneficiaries.* This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

(b) *Entire Agreement.* This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

(c) *Succession and Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties; *provided, however,* that the Buyer may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates; (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases the Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder); (iii) assign any or all of its rights hereunder in connection with a sale of all or substantially all of its business; and/or (iv) assign its rights hereunder to any lenders or financing sources, their agent and their successors and assigns.

(d) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(e) *Notices.* All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth on the signature pages hereto.

Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth. Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient.

(f) *Governing Law.* This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(g) *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(h) *Expenses.* Each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

(i) *Specific Performance.* The Buyer shall be entitled to an injunction or injunctions to prevent

breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof, in addition to any other remedy to which the aggrieved Party may be entitled, at law or in equity.

(j) *Jury Trial Waiver.* NO PARTY TO THIS AGREEMENT OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF A PARTY SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER AGREEMENTS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY HERETO THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

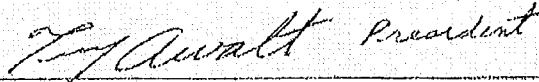
(k) *Joint and Several Liability.* Each and every liability of the Seller and/or the Sole Owner hereunder shall be the joint and several liability of the Seller and the Sole Owner.

* * * *

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

BUYER:

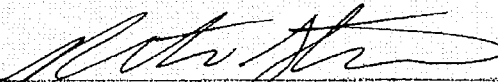
JSI STORE FIXTURES INCORPORATED

By:  President

Name: Terry Awalt
Title: President
Address:

SELLER:


DGS STORE FIXTURES, INC

By: 

Name: Peter Stevens
Title: CEO
Address: 959 W. UTAH AVE PAYSON, UT.

SOLE OWNER:

DGS Retail, Holdings, INC

By: 

Name: Peter Stevens
Title: CEO
Address:

"Adverse Consequences" means all proceedings, charges, complaints, claims, judgments, damages, penalties, fines, costs, amounts paid in settlement, Liabilities, Taxes, liens, expenses, and fees, including court costs and reasonable attorneys' fees and expenses, and specifically including any such expenses and fees incurred in connection with establishing the existence of Adverse Consequences or the Liability of a Party with respect thereto.

"Affiliate" means a Person controlling, controlled by or under common control with another Person.

"Code" means the Internal Revenue Code of 1986, as amended.

"Constitutive Documents" of an entity means the charter, bylaws, certificate of formation, operating agreement or other similar organizational, constitutive or governing documents of such entity.

"Excluded Liabilities" means each and every liability of the Seller.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Liability" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any Tax Liability.

"Person" means an individual, a partnership, a limited partnership, a corporation, an association, a joint stock company, a trust, a limited liability company, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

"Security Interest" means any mortgage, pledge, lien, encumbrance, charge, or other security interest of any kind, including any lease interest.

"Tax" and *"Taxes"* mean any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Sec. 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Liability" means any Liability for Taxes.

Schedule A

Equipment

Schedule "A"
Consignor's Assets

Manufacturer	Model	Serial #	Description
Holzma	HPP=510/38/38	0-240-15-2941	2004 CNC Front Load Panel Saw
American			Scissor Lift
HMT	Therma Web	B62/500	1993 Laminate Line
American			Scissor Lift & Lay-up Table
Yale	GLP050ZGE85	A875B10486X	Forklift: 3250 Lb. Cap, LP Gas, 3-Stage Mast, Side Shift, 6987 Hours
			Pallet Rack (4-Sections)
Vestal			Dump Hopper
Mac			Dust Collection System: 100 Hp, Fan, LMC Rotary Air Lock, Air Pulse
Marathon	Ramjet		Compactar
			Cyclone Dust Collector w/ Air Lock
Holzma	HPL33/38/16	0-240-15-0805	1999 CNC Rear Load Panel Saw
American			Scissor Lift
Quiet Cooler			Swamp Fan
Vestal			Dump Hopper
Griggio	TPL-2000	2887	1986 Shaper w/ 4-Roll Feeder
			Cantilever Rack (2-Sections)
Her Saf			Panel Router
Delta	12-14	RT-40	Table Saw w/ Powermatic 3-Roll Feeder
Her Saf			Panel Router
Wadkin Bursgreen		12AGS651023	Table Saw w/ 3-Roll Feeder
Altendorf	F-45-2800	96-04-126	1996 Sliding Table Saw: Short Stop Brake
Morbidelli	Globo	5D15	1983 32mm Borer
			Router Tables (Qty 2)
Powermatic			36" Pin Router (R8 type looking)
Crouch	71-60		Edge Sander: Oscillating

			Router Table
Vitap	35T-2 Alpha	210736E	2013 Vertical/Horizontal Borer
			Dump Hopper: 1/2 Cubic Yard
Sandingmaster	3300-1350 WWS	S91-7563	Wide Belt Sander: Floating Bed, 53" Cap, (3) Head, Contact, Contact, Platen
Ritter	R-130	1411	Horizontal Borer
Apex	0SS-3-85	0S-0107-86	Spindle Sander
			Cantilever Rack
Toyota			Electric Forklift: Ferra Battery Charger
Weinig	Hydromat 23	83361	Moulder: 7-Spindle w/ Universal, B,R,L,R,T,T,B,U, Jointed, Hydraulic Feed, Outboard Bearing
Griggio	PF-400	1848	1985 12" Jointer, 8000 rpm
Northtech	MRS-350A	0659032	2006 Gang Rip Saw: 75 Hp, (1) Laser Guide Light
Delta			Radial Arm Saw
Oliver	299C	207260	24" Planer: Itch Helical Head
Weinig	R-934	934-858	1997 Profile Grinder
Weinig	970070	83303	1998 Optical Comparator
			Jointing Preset Stand
			Moulder Heads & Profile Knives: (34) Heads
Delta			Benchtop Grinder
Justrite			Flammable Cabinet
			Dump Hopper
Lift Rite			Pallet Jack
Dewalt	DW718		Sliding Arm Miter Saw
Delta	28-205	86E08594	14" Bandsaw
Central			8" Benchtop Drill Press
			Folding Plastic Saw Horses (Qty 34)
Shop Fox	W-1687	M088887	2011 3 Hp Dust Collector
Omga	RN-450 FM "US"	255886	Radial Arm Saw w/ Tiger Stop
	Rover B 7.50	14714	2007 CNC Maching Center: (2) Tool Changer, (1) Router, Grooving

Biesse			Saw, Vertical & Horizontal Drill Spindles
Weeke	Optimat BHC-550	0-250-17-0328	2003 Flat Table CNC Router: (8) Ride Along Tool Changer, (1) Router, (1) Grooving Saw, Vertical & Horizontal Drill Spindles, (2) Becker Vacuum Pumps
			Dump Hopper (Qty 2)
Busellato	Super Master H-150	3794	1994 CNC Maching Center: Becker Vacuum Pump
Homag	Optimat KAL 310/3/A3	0-200-03-795	2004 Edgebander: Granular Glue, End Trim, Top & Bottom Trim, Top & Bottom Buffing
Biesse	Stream 81.9.5	30565	2003 Edgebander w/ Thomos Return Conveyor: Premill, Granular Glue, End Trim, Top & Bottom Trim, Top & Bottom Fine Trim, Corner Rounding, Profile Scraping, Top & Bottom Scraping, Top & Bottom Buffing, Top & Bottom Heat Glossers
Thomas		2040197	Return Conveyor
			Pallet HJAcka (Qty 6)
Biesse	Polymac	56996	2005 Single Contour Edgebander
Multi-Cam	MG Series	MG20441914	CNC Router: 5' x 10' Table
			Dump Hopper
Mar Bel	LS-1	5365	1986 Slitter
Delta	70-20	R9328	17" Drill Press
Delta			Unisaw
Delta			Benchtop Grinder
Delta			Sidekick Miter Saw
Delta	70-200	R-9328	17" Drill Press
Crown			Pallet Jack
Kreg	DK	DK 027068	Pocket Borer
Ridgid			Miter Saw
Knaack			Job Boxes w/ Hand Tools in boxes
Her Saf			Vacuum Jigs
Hyster	E50XL-27	C108V06845J	Electric Forklift: 4500 Lb. Cap, 3-Stage Mast, Side Shift
Hyster	E50XL-27	C108YO6846J	Electric Forklift: 3-Stage mast, Side Shift
			Rolling Safety Ladder
Fox	60	944427	Baler
			Pallet Rack (3-Sections)

Eagle	1932		Flammable Cabinet: 30-Gallon
			Spray Booth
Seco			Dust Collector
Shannon			Tabletop Post Former
Wesco			Pallet Jack
Almex	TL6-59-114	2001-08-13702	Membrane Vacuum Press: Shuttle w/ (2) Tables, 51" x 106"
			Pallet Rack (56-Sections)
			Pallet Jacks (Qty 2)
			Dump Hopper: 1/2 Cubic Yard
Central			8" Drill Press
			Cantilever Rack
Roland Soljet Por III	XC-540	ZV31635	Printer
Roland Soljet Por III	XC-540	ZV90582	Printer
Roland Soljet Por III	XC-540	ZW13754	Printer
Roland	Camm-1 Pro		Printer
GBC	Artic Titan	RG02697G	Laminator
GBC	Artic Titan	OEG3625	Laminator
			Pallet Rack (4-Sections: 8'
Makita			Miter Saw Sliding Arm
Bewo			Cutoff Saw
CTD		3444	Cutoff Saw
			Pallet Jacks (Qty 2)
Orion	M67/17i5	2007-0717801	Stretch Wrapper
			Pallet Jacks (Qty 7)
			Banding Carts (Qty 4) w/ Tools
Salter	Breakmell		Digital Scale
			Banding Carts

Safety Speed Cut	H-5		Vertical Panel Saw
Kufo/Seco			Dust Collector
			Pallet Rack (2-Sections)
Sullair	12BS-50HACA C	003-89298	Air Compressor: 50 Hp
Sullair	3709/A	200710190049	Air Compressor: 50 Hp
Sullair	SRL-200	3378460001	Air Dryer
			Air Receiving Tank
Delta			Sidekick Miter Saw
			Rolling Safety Ladder
			Pallet Jack
			Rolling Racks (Qty 3)
			Dump Hopper
			Finishing Room:
Graco			(2) Pumps & Spray Booth
Kremlin			Retson Pump
			Fan, Paint Shaker, Gun Cleaner
Prime			Heat Oven
Yale	EKP040BBN36 SE077	N400684	Electric Forklift: 4000 Lb. Cap, 3-Stage Mast
			Benchtop Vertical Sander, Belt & Disc Sander
Rockwell	37-220		6" Jointer
Pro Edge			Miter Chopper
Rockwell	Unisaw	JF6393	10" Table Saw
Upright	MX19		Electric Platform Lift
SCMI	Si300N	AB/163718	2004 Sliding Table Saw: 10' Table Ref# 032017
General	10-105MI	10419802	Dust Collector
Ro-Lift			Pallet Jack
			Banding Cart

			Dump Hopper
Centauro	Compact 500 CO	5720	18" Bandsaw
Crown			Walk Behind Low Height Forklift: Electric (Out of Service)
Yale	ERP040TFNUE082	A870N04398T	Electric Forklift (Out of Service)
Yale	ERP040TFN3CSE082	N702783	Electric Forklift (Out of Service)
			Pallet Rack (Disassembled)
Delta			Unisaw
Evans			Postformer
UTM			T-Mold Machine: T-Edge Pounder
CTD	DM-200	326	Double Miter Saw
Delta			Radial Arm Saw
CTD	CM-225		Cutoff Saw
Delta	Unisaw		Table Saw
			Pallet Jack
Pacco			Pinch Roller
Newman	K-16		Table Saw
			Pallet Jack
Mobel			Paint Pumps (Qty 3)
Jiffy			Steam Guns (Qty 30)
Roland	SC-540		Printer
SCMI	R-8		Router
			Pallet Jacks (Qty 30)
Amada	Lasmac LC-2415 CXII/FS16LB-EX	C12602469	1998 Laser Cutter: Fanuc Laser (Model C2000C), Fanuc Series 16-L Controller,
	HCV7500-PR-NF	12986	Koolant Koolers
			Dump Hooper
			Dump Hopper

			Sawblades
			Pallet Jack
Jet	JDP-17MF	4078929	17" Drill Press
			Metal Cutoff Saw
Starte	H200W	135633	Horizontal Metal Bandsaw
Scotchman	CPO-350LT	B93330512	Cutoff Saw
Clausing 20	2276	202060129	Drill Press
Delta	70-200	R-9116	17' Drill Press
Dake	Tiger 350 AX		Metal Saw
L-Tec	PCM-Vpi		Welder
			Torch Set w/ Cart, Torch, Regulators
Accupress	7606	4678	1998 Press Brake: 60-Ton, 6' Bed
Accupress	7413012	3103	1995 Press Brake: 130-Ton, 12' Bed
Accupress	625010	2056	1995 Metal Shear: .25 Thickness Cap, 10'
Chicago			Finger Brake
Powermatic			12" Disc Sander
			Double Arbor Grinder
Chicago	HN10	327149T	Notcher
Uni-Hydro	42-14	3P3338X	Ironworker
Western	Arctronics	FK684	Spot Welder: 30 Kva
BPR	CPH40	2006C015	2006 (3) Roll Bender
Miller	252		Welder
Miller	Dynasty 200		Welder, Table, Curtain
			Tables
L-Tec	Heliarc 250 HF		Welder
Miller	252		Welder
General			Pneumatic Tools
	252		Welder

Miller			
			Table, Curtain
Dayton			Grinder
Miller	Snycrowave 200		Welder
Miller	252		Welder
Miller	252		Welder
Miller	Maxstar 200		Welder
Dayton			Grinder
			Table
Thermal Arc			3 in 1 Tig Welder
Miller	252		Welder
			Table
			Misc. Throughout Building: Hand Toold, Portable Tools, Work Tables, Router Bits, Tooling
Ford	Econoline 250		Cargo Van: 294,970 Miles
Freightliner	Business Class M2	VIN# 1FVACWDC64 HM51920	2003 Truck w/ 24' Box Body, 251,742 Miles, 26,000 GVW
Great Dane	7311	Vin# 1GRAA5612RB 117004	1993 Trailer w/ Lift
Great Dane	701TZ-WP	VIN# 1GRAA029LS0 00709	1989 Reefer Trailer
Great Dane	701TZ-WP	VIN# 1GRAA0027LS 000708	1989 Reefer Trailer
Great Dane	701TZ-WP	VIN# 1GRAA0026LS 000702	1989 Reefer Trailer
Great Dane	741T-45	VIN#BO7659	1978 Trailer
(4) Other Trailers			(4) Other Trailers
			Storage Containers (Qty 2): 40'
			Pick Up in the complete plant(All small tools too numerous to mention)
			Content of office

Schedule "B"
Excluded Assets

Manufacturer	Model	Serial #	Description
			5 Cubicle Office furniture with computers
			Server room computers and equipment
			Any finished Product (What is left can be sold on commission if needed)
			Any Work in Process (What is left can be sold on commission if needed)
			Any Raw Materials (What is left can be sold on commission if needed)

Schedule B

Excluded Assets

Schedule "B"
Excluded Assets

Manufacturer	Model	Serial #	Description
			5 Cubicle Office furniture with computers
			Server room computers and equipment
			Any finished Product (What is left can be sold on commission if needed)
			Any Work in Process (What is left can be sold on commission if needed)
			Any Raw Materials (What is left can be sold on commission if needed)